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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,946	01/22/2004	Martin Vornchm	LUKP:103US	5983
7590	05/18/2005		EXAMINER	
Robert P. Simpson, Esq. Simpson & Simpson, PLLC 5555 Main Street Williamsville, NY 14221-5406			LORENCE, RICHARD M	
			ART UNIT	PAPER NUMBER
			3681	

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/762,946	VORNEHM ET AL.	
	Examiner	Art Unit	
	Richard M. Lorence	3681	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 January 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-17 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 22 January 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/29/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the first Office action on the merits of Application No. 10/762,946 filed on January 22, 2004. Claims 1-17 are currently pending.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

The disclosure is objected to because of the following informalities:

The description at paragraph [0023] is unclear regarding the first and second speeds. If 5 mm/s is considered to be a low speed, how can 1 mm/s be considered to be a high speed? Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is not clear with respect to the opening recited in line 4. The transmitter cylinder/piston assembly 3 is joined to the pickup cylinder/piston assembly 2 via the hose 8 connected to an opening in the clutch-side end of the cylinder 6, whereas the compensating reservoir 22 is connected to the cylinder 6 via the opening 6. The claim implies that the transmitter cylinder/piston assembly 3 and the cylinder/piston assembly are joined via the same opening (9) that is joined to the reservoir.

The piston recited in line 3 of claim 2 is vague inasmuch as two different cylinder/piston assemblies were previously recited in claim 1. Accordingly in line 3 it is believed that "the piston" should read - - the piston of the transmitter cylinder/piston assembly - -.

Claim 5 recites the limitation "the first area" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the second area" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "the third area" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "the safety distance" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Method claims 10-17 do not particularly point out the active method steps. The claims should be amended so as to recite each of the steps by way of the gerund verb

form, e.g. *detecting* the position of the controllable piston, *displacing* the piston, *detecting* the rotational speeds of the input and output shafts, etc.

Claim 12 is unclear regarding the first and second speeds. If lower than 5 mm/s (e.g. 4 mm/s) is considered to be a low speed, how can higher than 1 mm/s (e.g. 2 mm/s) be considered to be a high speed?

Further with regard to claim 12, the term "preferably" renders the claim indefinite because it is unclear whether the limitations following the term are part of the claimed invention. See MPEP § 2173.05(d).

Claim 13 recites the limitation "the control-side end" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 5-7 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Bates '432. Note Figure 2 which shows the clutch actuation assembly including transmitter cylinder/piston assembly 74, pickup cylinder/piston assembly 40, compensating reservoir 76, coupling component 42, controller unit 31, electric motor 86 and transmission 82, 84. The rotational speed detection means are

shown in Figure 1 at 25 and 28. Referring again to figure 2 the piston of the transmitter cylinder/piston assembly can be moved between positions in front of, behind, and covering the opening which connects the reservoir with the transmitter cylinder/piston assembly.

Claims 1-3 and 5-7 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Salecker et al. '448. Note Figure 1 which shows the clutch actuation assembly including transmitter cylinder/piston assembly 16, pickup cylinder/piston assembly 18, compensating reservoir 22, coupling component 13, controller unit 50, electric motor 19 and rotational speed detection means 35, 33. The transmission is not shown in the drawing but is discussed at column 4, lines 34-37. Regarding claim 2 note column 6, lines 35-46 and 52-62 which describe the control of the clutch at normal and slower rates, which implies that the motor is operable at two different speeds. The piston of the transmitter cylinder/piston assembly can be moved between positions in front of, behind, and covering the opening which connects the reservoir with the transmitter cylinder/piston assembly.

Claims 1-3 and 5-7 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Rammhofer et al. (DE 19857707 A1). Note Figure 2 which shows the clutch actuation assembly including transmitter cylinder/piston assembly 130, pickup cylinder/piston assembly 136, compensating reservoir 152, coupling component 126, controller unit 146, electric motor 142 and transmission 140. Also see the international search report.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim1-17 as best understood rejected under 35 U.S.C. 103(a) as being unpatentable over Salecker et al. '448 in view of Rammhofer et al. (GB 2317933 A). As discussed above Salecker et al. '448 shows the each of the claimed structural components of the clutch control device. Salecker et al. does not disclose the control of the piston speed so as to be low when moving toward the modulation limit and to be high after the opening has been passed as set forth in claims 4 and 11. GB 2317933 A teaches controlling the piston speed in the claimed manner at page 26, lines 5-32. It would have been obvious to one having ordinary skill in the art at the time the invention was made to control the speed of the piston during shifting in order to prevent seal deformation and premature wear in view of the suggestion of Rammhofer et al.

Prior Art Citation

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The remainder of the prior art cited by applicant in the Information Disclosure Statement filed on April 29, 2004 has been considered. The

examiner further cites Jung et al. '110, Wagner et al. '227 (GB) and Berger et al. '474 (GB) each of which show clutch control devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard M. Lorence whose telephone number is (571) 272-7094. The examiner can normally be reached on Mondays through Fridays from 9:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on (571) 272-7095. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Richard M. Lorence
Primary Examiner
Art Unit 3681